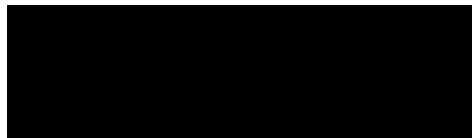




U.S. Citizenship
and Immigration
Services

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MAR 23 2004

FILE:



Office: MIAMI, FLORIDA

Date:

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on July 20, 2001. The AAO affirmed its decision on October 2, 2002, subsequent to a motion to reconsider submitted by counsel. The AAO reaffirmed its July 20, 2001, decision on July 2, 2003, subsequent to a second motion to reopen submitted by the applicant. The matter is now before the AAO on a third motion to reopen. The motion will be dismissed and the AAO decision dated, July 20, 2001, will be affirmed.

The record reflects that the applicant is a native and citizen of Haiti, who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States (U.S.) by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and she is the beneficiary of an approved petition for alien relative. She seeks a waiver in order to remain in the U.S. with her family and to adjust her status to that of a lawful permanent resident under the Haitian Refugee Immigrant Fairness Act of 1998, Pub. L. 105-277 (HRIFA).

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The decision was affirmed by the AAO on appeal. *See* AAO Decision, dated July 20, 2001.

In a motion to reconsider, counsel asserted that the AAO decision was contrary to law, an abuse of discretion, and inconsistent with the facts of the case and information presented. After careful review of the case, the AAO affirmed the prior AAO decision, dated July 20, 2001. *See* AAO Decision, dated October 2, 2002.

In a second motion to reopen, the applicant asserted that morally compelling circumstances warranted that the matter should be reopened. The applicant asserted further that she was submitting to the Immigration and Naturalization Service a properly done waiver and an extreme hardship declaration regarding the hardship that her husband would suffer if she were removed from the United States. The AAO noted that no new information or evidence was submitted and that the applicant did not identify any legal error or misapplication of law in the previous AAO decision. Accordingly, the AAO summarily dismissed the motion and affirmed its prior July 20, 2001, decision. *See* AAO Decision, dated July 2, 2003.

In the present third motion to reopen, the applicant reasserts that she is submitting to the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS), a properly done waiver and declaration regarding the hardship her husband would suffer if she were removed from the United States. In addition, the applicant asserts that she is submitting new facts and evidence of extreme hardship to her husband consisting of a new affidavit from her husband (Mr. [REDACTED]) as well as three letters from doctors indicating that the applicant's husband sought treatment. In addition, the applicant submits two letters from family friends indicating that the applicant and her husband have a bona-fide marriage.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record contains a letter from Dr. [REDACTED] dated July 28, 2003, stating that Mr. [REDACTED] sought treatment at his office for lower back and leg pain between January 31, 2003 and April 23, 2003. A second letter from Dr. [REDACTED] dated July 21, 2003, states that Mr. [REDACTED] sought treatment at his office between June 1, 2000 and October 18, 2000 for a neck, left shoulder and lower back condition. A third, letter by Dr. [REDACTED] states that Mr. [REDACTED] sought treatment at his chiropractic clinic between December 12, 2001 and August 12, 2002.

The AAO notes that the letter from Dr. [REDACTED] is undated and that the signature on the letter is illegible and written in a different ink and handwriting than the body of the letter. The AAO notes further that the record contains no information or evidence to substantiate the professional qualifications of any of the three doctors. Moreover, the AAO notes that none of the doctors' letter contains information regarding the type of treatment the applicant received, or the level of pain or injuries that Mr. [REDACTED] experienced. In addition, none of the letters indicates that Mr. [REDACTED] is unable to work or conduct normal activities due to his back problems, or that he requires physical assistance from his wife. The AAO therefore finds that the doctors' letters lack probative value. As such, they will not be considered as evidence of hardship to the applicant's husband.

The AAO finds further that Mr. [REDACTED] affidavit provides no new facts or evidence regarding the hardship he would suffer if his wife were removed from the United States. Similarly, the letters submitted from two family friends contain no information or evidence relating to any hardship that Mr. [REDACTED] would suffer if the applicant were removed from this country.

Because the applicant failed to present any new evidence or facts of hardship in the present motion to reopen, the motion will be dismissed.

ORDER: The motion to reopen is dismissed and the order of July 20, 2001, dismissing the appeal is affirmed.